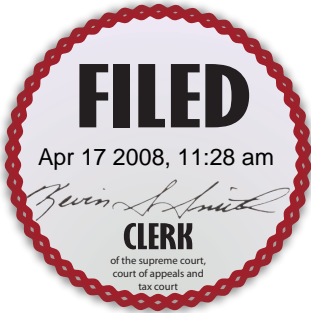


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

SANDRO MEDINA,
Appellant-Defendant,

VS.

STATE OF INDIANA,
Appellee-Plaintiff.

$$\begin{array}{c}) \\) \\) \\) \\) \\) \\) \\) \end{array}$$

No. 43A03-0708-CR-375

APPEAL FROM THE KOSCIUSKO CIRCUIT COURT
The Honorable Rex L. Reed, Judge
Cause No. 43C01-0607-FA-170

April 17, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Sandro Medina appeals his conviction of dealing in cocaine, a Class A felony.¹
We affirm.

FACTS AND PROCEDURAL HISTORY

In 2006, Joshua Craig and Oscar Vega were incarcerated in the same cell in the Kosciusko County Jail. Vega told Craig he could supply him with cocaine when they were released. After he was released, Craig approached Detective Joe Stanley and reported he could purchase drugs from Vega.

Craig arranged to purchase cocaine from Vega on June 30, 2006. Vega told Craig to come to his house that morning. Before making the purchase, Craig met Detective Stanley and Detective Matt Rapp. The detectives searched Craig; his girlfriend, who would be driving; and their vehicle. No contraband was found. The detectives gave Craig \$240 and an audio transmitter.

When Craig arrived at Vega's house, Vega said he was waiting for a friend to bring some cocaine. A few minutes later, Jose Ramirez arrived in a black Explorer. Ramirez did not have cocaine with him and told Craig to follow him to Pike Lake. Detectives Stanley and Rapp followed them to Pike Lake. Detective Spiegle was nearby and also came to Pike Lake.

Medina arrived at Pike Lake in a Lincoln Town Car. Ramirez entered the Town Car, and Detective Stanley saw the two men exchange something. Ramirez returned to the Explorer, and Medina drove away. Craig entered the Explorer, gave Ramirez \$240,²

¹ Ind. Code § 35-48-4-1.

² Ramirez later gave the money to Medina.

and received two “eight balls” of cocaine. (Tr. at 53.) Detective Spiegle attempted to follow Medina, while Detective Stanley met with Craig and retrieved the drugs and transmitter.

Prior to trial, Craig had been identified only as “confidential informant 333.” During opening statements, the prosecutor referred to Craig by name. Medina informed the trial court he had not been given informant’s name and address and argued this was a violation of local court rules. In response, the State called Detective Stanley, whom Medina had deposed. Detective Stanley testified Medina did not ask for the identity of the confidential informant, and he would have provided Craig’s name and address to Medina upon request. The trial court overruled the objection and permitted Craig to testify. The jury found Medina guilty of dealing in cocaine.

DISCUSSION AND DECISION

1. Identity of Confidential Informant

Medina argues the State violated the Kosciusko County discovery rules. LR-CR00-1(A)(1) requires the State to disclose the “names and last known addresses of persons whom the State may call as witnesses.” (Appellant’s App. at 103.) Section C provides, “Any objections to the discovery order must be filed within fourteen (14) days prior to omnibus date.” (*Id.* at 104.) The State listed “CI 333” as a potential witness. Medina contends the State violated the Kosciusko Courts’ automatic disclosure rules

because it did not disclose Craig's name or address and did not file an objection; therefore, his testimony should have been excluded.³

Ordinarily "absent clear error and resulting prejudice, the trial court's determination of [discovery] violations and sanctions will be affirmed." When reviewing a challenge to discovery matters, we must give a trial court wide discretionary latitude. Since the trial court has a duty to promote the discovery of truth and to guide and control the proceedings, it will be granted deference when assessing what constitutes substantial compliance with discovery orders. In cases where there has been a failure to comply with discovery procedures, the trial court is usually in the best position to determine the dictates of fundamental fairness and whether any resulting harm can be eliminated or satisfactorily alleviated. If remedial measures are warranted, a continuance is usually the proper remedy. Failure to request a continuance, where a continuance may be an appropriate remedy, constitutes a waiver of any alleged error pertaining to noncompliance with the trial court's discovery order.

Fleming v. State, 833 N.E.2d 84, 91 (Ind. Ct. App. 2005) (citations omitted).

Medina acknowledges he did not request a continuance, but he claims "such a 'cure' would be insufficient for an intentional violation of the rules." (Appellant's Br. at 8) (emphasis in original). Medina cites no authority for the proposition that a continuance is not a remedy for an intentional violation or that an intentional violation must result in exclusion of the evidence. On the contrary, exclusion "is an extreme remedy and is to be used only if the State's actions were deliberate and the conduct prevented a fair trial." *Berry v. State*, 715 N.E.2d 864, 866 (Ind. 1999). Medina has not explained why a continuance would not remedy any prejudice caused by the delay in

³ Medina also claims he was entitled to notice the informant would actually testify. He has not offered any authority for his contention he was entitled to a final list of witnesses. Medina's only argument before the trial court was that the State violated the local automatic disclosure rules; there was no mention of any failure by the State to list Craig as a witness. (See Tr. at 17-18.) Therefore, Medina has waived this argument. *Whitfield v. State*, 699 N.E.2d 666, 668 (Ind. Ct. App. 1998) (argument raised for first time on appeal is waived), *trans. denied*, 706 N.E.2d 171 (Ind. 1998).

disclosure. Therefore, Medina waived this issue by failing to request a continuance. *See Fleming*, 833 N.E.2d at 91.

Waiver notwithstanding, the trial court's ruling was not clear error. Medina acknowledges the discovery materials provided by the State referred to a confidential informant. The probable cause affidavit described the informant's role in the drug purchase. Craig's testimony was consistent with the affidavit and was largely duplicative of the testimony of the other witnesses.⁴ *See Morales v. State*, 492 N.E.2d 334, 336 (Ind. Ct. App. 1986) (finding no error in admission of evidence not provided during discovery that was cumulative of other admissible evidence), *reh'g denied, trans. denied*. The State listed "CI 333" as a potential witness, and Medina did not ask for the informant's identity. *See Warren v. State*, 725 N.E.2d 828, 832 (Ind. 2000) (finding no error in admission of photographs the State had failed to provide to the defense because defense was aware of their existence and was not ambushed by their use at trial). Medina knew the State's witness list included a confidential informant, but he did not bring this alleged violation to the court's attention until after opening statements were completed. *See Fleming*, 833 N.E.2d at 93 (finding no error in admission of medical documents where defense did not seek continuance or alert court prior to trial that it needed the documents). The trial court acted within its discretion to permit Craig's testimony.

2. Sufficiency of the Evidence

⁴ For this reason, his testimony was not essential to establish a chain of custody, as Medina argues.

Medina argues the evidence was not sufficient for a conviction because the buy was not controlled.

In reviewing a claim of insufficient evidence, we will affirm the conviction unless, considering only the evidence and all reasonable inferences favorable to the judgment, we conclude no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. We neither reweigh the evidence nor judge the credibility of the witnesses.

Watson v. State, 839 N.E.2d 1291, 1293 (Ind. Ct. App. 2005) (citations omitted).

Medina argues the evidence was insufficient under *Watson*. In that case, a confidential informant arranged to purchase drugs from Watson. The police photocopied the money supplied to the informant, but did not search her. The informant met Watson at a White Castle and entered his car. When she emerged a short time later, the police took Watson into custody. The buy money was found in Watson's pocket, and the informant had a bag of cocaine in her pocket. We held the evidence was insufficient because the buy was uncontrolled *and* the informant did not testify at Watson's trial; therefore, the jury could only speculate whether the drugs were ever in Watson's possession. *Id.* at 1294.

Watson discussed *Toney v. State*, 715 N.E.2d 367 (Ind. 1999), in which our Supreme Court upheld a conviction of dealing in cocaine after an informant purchased drugs from Toney. The informant had not been searched prior to the purchase, but he testified "the sale was authentic." *Id.* at 369. The Supreme Court noted Toney was found with the buy money and there was "no suggestion of how he otherwise acquired it;" however, it held the informant's testimony alone was sufficient. *Id.*; *see also Watson*, 839 N.E.2d at 1294 ("We emphasize that had the CI testified or had she been properly

searched before the buy, the jury would have had a reasonable basis for believing Watson had the cocaine before the buy.”).

In Medina’s case, everyone involved in the transaction testified, and their testimony provided sufficient evidence from which a jury could conclude the drugs had been procured from Medina. Craig was searched before he went to Vega’s house. Craig, Vega, and Ramirez all testified they did not have any drugs. Ramirez and Vega testified they did not know Craig was an informant, and there is no apparent reason why they would make an unnecessary trip to Pike Lake or involve Medina if they had drugs to sell to Craig. Ramirez testified he got the drugs from Medina. Detective Stanley saw Ramirez and Medina exchange something. Detective Stanley testified he followed Craig to the court house, Craig had no opportunity to stop along the way, and Craig turned over two “eight balls” when they arrived.

Medina questions the credibility of Ramirez and Craig, as they both hoped to obtain leniency in charges pending against them. However, Medina cross-examined them on their motives, and the jury was in the best position to evaluate their credibility. We may not reweigh the evidence, and we conclude there was sufficient evidence from which a reasonable jury could find Medina guilty beyond a reasonable doubt.

Affirmed.

KIRSCH, J., and RILEY, J., concur.